Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s) SCHILLING ET AL.	
10/581,951		
Examiner	Art Unit	
DANIEL S. LARKIN	2856	
DANIEL S. LAKKIN	2000	

The MAILING DATE of this communication appears on the cover sheet with the correspondence address − THE REPLY FILED 19 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. 1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies. (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.716, or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.714. The reply must be filed within one of the following time periods: a) ☑ The period for reply expires 3_months from the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. It no event, however, will the statutory period for reply expires 18 for the final rejection. Set with notice 10 to 15 to shecked, check either box (6) or (0). ONLY CHECK DOX (0) WHEN THE FIRST REPLY WAS FILED WITHIN TW. MONTHS 0FT THE FINAL REJECTION. See MPEP 705.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the final rejection, even if timely filed may reduce any seamed patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL. □ The Notice of Appeal was filed on		DANIEL S. LARKIN	2856			
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have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CPR 1.17(a) is activated form: (1) the expiration date of the shortened statutory period for reply originally set in fell office action; or (2) as for thin (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely flied may reduce any earned patent term adjustment. See 37 CPR 1.70(b). NOTICE OF APPEAL I The Notice of Appeal was filed on	no event, however, will the statutory period for reply expire I Examiner Note: If box 1 is checked, check either box (a) or	ater than SIX MONTHS from the mailing (b). ONLY CHECK BOX (b) WHEN THE	date of the final rejection	n.		
2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37 (b)), to avoid dismissal of the appeal. Since Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). MENDMENTS Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ they raise me issue that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They raise the issue of new matter (see NOTE below); (d) ☐ They raise the issue of new matter (see NOTE below); (e) ☐ They raise the issue of new matter (see NOTE below); (d) ☐ They raise the issue of new matter (see NOTE below); (e) ☐ They raise the issue of new the proposed or manned to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or	have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension under 37 CFR 1.7(a) is actualized from: (1) the expiration date of the shortened statutory period for exply originally set final Offices action; or (2 set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely finary reduce any earner platent term adjustment. See 37 CFR 1.704(b).					
AMENDMENTS 3.	The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exte	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of the			
(a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or appeal; and/or They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 4.1.33(a)). Applicant's reply has overcome the following rejection(s): (Applicant's reply has overcome		,	(-,			
appeal; and/or (d)	 (a) They raise new issues that would require further co (b) They raise the issue of new matter (see NOTE below 	nsideration and/or search (see NOTow);	E below);			
(d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE:		ter form for appeal by materially rec	lucing or simplifying t	ne issues for		
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s):		corresponding number of finally reje	ected claims.			
5. Applicant's reply has overcome the following rejection(s): 6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) placeded to: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence filed to overcome all rejections under appeal and/or appellant failed its provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 1.13(q)(1). 10. The affidavit or other evidence filed after a failed to overcome all rejections under appeal and/or appellant failed its provide a showing a good and sufficient reasons way with its necessary and was not earlier presented. See 37 CFR 4.133(q)(1).	NOTE: (See 37 CFR 1.116 and 41.33(a)).					
6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed:			mpliant Amendment (l	PTOL-324).		
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Claim(s) objected to: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Signature of the rejected of the rejec	7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows:					
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	11. X The request for reconsideration has been considered bu	t does NOT place the application in	condition for allowan	ce because:		
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/Daniel S. Larkin/		/Daniel C. Lerkin/				
Primary Examiner, Art Unit 2856			nit 2856			

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Continuation of 11. does NOT place the application in condition for allowance because: the arguments presented are not deemed to be persuasive.

With respect to Applicants' argument that Cronin and Abdel-Rehim teach syringes having nothing in common; thus their combination would not be obvious is respectfully false. First, both syringes are devices for extracting material/substances from a sample. Thus, the two devices do have something in common. Additionally, one of the embodiments disclosed within Abdel-Rehim disclose coating a filter with the solid phase material, page 4, lines 4-5. Secondly, the examiner has previously discussed the general teachings of reference US 2001/0032521 (Pawliszyn), which discloses that SPME may be used to extract gaseous fractions from a sample, para 40-41. Pawliszyn also discloses that SPME may be used as a "filter" to sample airborne particulate matter, para 43-44. Thus, tould also appear that Abdel-Rehim could perform the functions of Cronin. Cronin was cited to teach a positional relationship between the extraction means and the syringe and not to replace the type of extraction media used within the syringe device. Given that one of drainsy skill in the aft valud and should be aware of the many uses of SPME material to sample gas fractions, as well as particulate material, the examiner argues that one of ordinary skill in the aft vould recognize the many types of means available to release the fractions from the extraction material.

With respect to Applicants' argument that the material of Abdel-Rehim would always require a solvent to transfer the solute as compared to the invention, the examiner respectfully disagrees. First, claims 1 and 2 as currently presented make no reference to thermal desorption as argued by the Applicants. Furthermore, the claims also do not preclude the use of a solvent to transfer the extracted material from the stationary phase. The general teachings of Pawliszyn also teach using desorption combined with the use of a carrier gas to the very similar to Applicants use of heat and a carrier gas to extract samples from the stationary material, part, lines 12-16.

With respect to Applicants' argument regarding sampling efficiency, the examiner is unconvinced. Applicants freely acknowledge, page 5, time 4.9, that the SPME fibers are capable of sampling gaseous solutes; but then recites dimensions of packing materials, which are not claimed, to be used with Applicants' device. Thus, what is claimed is any stationary material and not the specific material argued having a specific surface size.